

# ETHICS IN CITY GOVERNMENT

## A Presentation to the

Department Directors, Deputy Directors,  
Assistant Directors, Deputy Assistant Directors,  
Senior Staff, Mayor's Executive Staff, and  
Members of  
City Boards and Commissions

January 28, 2006, and  
February 8, 2006  
by the

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## ETHICS IN CITY GOVERNMENT

*Ethics – a set of principles of right or good behavior; a theory or a system of moral values; the rules or standards of a person or the members of a profession.*

*Webster's II New College Dictionary (1999)*

The following is an outline of ethics provisions found in the City Charter, Code of Ordinances, City administrative rules, and related state laws. The reader should become familiar with these various provisions. This outline is intended for use by Department Directors, Deputy Directors, other senior personnel, and the Chairs (or Executive Directors, if applicable) and members of City Boards and Commissions. This outline is only intended to provide general guidance regarding situations in which ethical issues may arise. Situations that actually arise tend to be fact intensive, and specific legal counsel should be sought as may be appropriate.

The City Charter and Code of Ordinances may be accessed online at [www.houstontx.gov](http://www.houstontx.gov). City administrative rules, including Executive Orders and Administrative Procedures promulgated by the Mayor are available on the City's intranet at [www.choice.net](http://www.choice.net). While it is recommended that you consult the Legal Department in connection with any ethics issue or matter, the state statutes referenced in this outline are available online at [www.capitol.state.tx.us/statutes/statutes.html](http://www.capitol.state.tx.us/statutes/statutes.html).

### TERMINOLOGY

State statutes, the City Charter and the Code of Ordinances often use different terms to delineate those officers or persons who may come within their provisions. Examples are:

#### ***Terms***

#### ***Source law***

"Public servant"	Texas Penal Code, Chs. 36, 37
"Municipal officer"	Texas Local Government Code, Ch. 145
"Local public official"	Texas Local Government Code, Ch. 171
"Local government officer"	Texas Local Government Code, Ch. 176
"Public official"	Texas Government Code, Ch. 573

As a result, it is often first necessary to determine **exactly** which persons ARE included within a given regulation. The answers may vary depending on the functions or duties of the officer.

## STATE LAWS RELATING TO ETHICS

### I. Chapter 36, Texas Penal Code (Bribery & Corrupt Influence)

This Chapter addresses a number of subjects, including bribery. However, gifts and honoraria are subjects that most frequently raise inquiries. Chapter 36 extends to public servants ***and to any other person in whose welfare the beneficiary has a direct and substantial interest*** and has been held to include a spouse and a child.

#### ***Public Servant***

The term “***public servant***,” as used in the Penal Code, means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he or she has not yet qualified for office or assumed his or her duties:

- (A) ***An officer, employee, or agent of government;***
- (B) A juror or grand juror;
- (C) An arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;
- (D) ***An attorney at law or notary public when participating in the performance of a governmental function;***
- (E) A candidate for nomination or election to public office; or
- (F) ***A person who is performing a governmental function under a claim of right although he is not legally qualified to do so.***

#### ***Benefit***

The term “benefit”, as used in this chapter of the Penal Code is defined as:

“ . . .anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.” (Pen. C., § 36.01(3))

Closely related is the giving or receiving of an honoraria to or by a public servant. The term “***honorarium***” is not defined in the Penal Code but is generally understood to encompass the following:

“ . . . a free gift; a gratuitous payment, as distinguished from hire or compensation for a service; a voluntary payment for that for which no remuneration could be collected by law.

The Texas Ethics Commission has issued a number of opinions on the subject of “benefits,” including whether certain items constitute an “honorarium.” Some examples are shown below:

- The receipt of a plaque could not reasonably be regarded as pecuniary advantage and is therefore not a benefit for purposes of Chapter 36 of the Penal Code. Tex. Ethics Comm. Op. No. 36 (1992)
- A public servant may not accept free membership in an organization as consideration for a speech. Tex. Ethics Comm. Op. No. 57 (1992)
- Promotional or commemorative items of minimal value such as caps, coffee mugs, tee shirts and key rings, do not constitute improper “benefit” if such items are not solicited and not offered or accepted in exchange for any action or inaction on part of public servants. Tex. Ethics Comm. Op. No. 61 (1992)
- A legislator may not accept an engraved clock in appreciation for a speech even if the donor is required to report the gift under the lobby statute, if the legislator would not have been asked to give the speech except for his official position. Tex. Ethics Comm. Op. No. 97 (1992)
- A public servant may accept an honorarium for performing services if the public servant’s official status was not a deciding factor in the decision to request the public servant to perform those services. Tex. Ethics Comm. Op. No. 305 (1996)

### ***Honorarium***

- Section 36.07 prohibits public servants from accepting an honorarium for services associated with their being public servants (speaking engagements, etc.).
- There is an **exception** for transportation, food, and lodging when a service is rendered such as addressing an audience. Tex. Ethics Comm. Op. No. 273 (1995).
- There is no general prohibition against a legislator serving on the board of a private entity; however, the legislator should be aware of the restrictions

contained in Chapter 36 of the Penal Code. Tex. Ethics Comm. Op. No. 228 (1994).

### ***Gifts to Public Servant - In General***

- Section 36.08 prohibits a public servant from soliciting or accepting gifts from persons over whom the public servant has business, official, regulatory, or jurisdictional authority.
- Section 36.09 makes it an offense to offer gifts to a public servant.
- An offense under either section is a ***Class A misdemeanor***.

### ***Gifts to Public Servant - Exceptions***

- Section 36.10 sets out ***limited exceptions*** to the prohibitions contained in Sections 36.08 and 36.09, as follows:
  - A fee prescribed by law to be received by a public servant or any benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;
  - A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or
  - A benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:
    - the benefit and the source of any benefit in excess of \$50 is reported in the statement; and
    - the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;
- A political contribution as defined by Title 15, Election Code;

- A gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code; or
- An item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code; or
- An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity.
- Section 36.08 (Gift to Public Servant) **does not apply** to food, lodging, transportation or entertainment accepted as a guest and, if the **donee** is required to report those items, **reported by the donee** in accordance with that law.
- Section 36.09 (Offering Gift to Public Servant) **does not apply** to food, lodging, transportation or entertainment accepted as a guest and, if the **donor** is required to report those items, **reported by the donor** in accordance with that law.

### ***Advisory Opinions***

The Texas Ethics Commission is authorized to issue advisory opinions regarding Chapter 36 upon which public servants may rely, and action taken by a public servant in reliance on an opinion from that agency is a defense to prosecution. Staff attorneys of the Commission are available by telephone at 1-800-325-8506. Advisory opinions can be reviewed on the agency's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

## **II. Chapter 37, Texas Penal Code (Perjury & Other Falsification)**

### ***Government Records***

Chapter 37 of the Texas Penal Code is titled “Perjury and Other Falsification” and is included because it deals with certain offenses relating to a “government record,” which is defined in Section 37.01(2) to mean:

- (A) Anything belonging to, received by, or kept by government for information, including a court record;
- (B) Anything required by law to be kept by others for information of government;
- (C) A license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States;
- (D) A standard proof of motor vehicle liability insurance form described by Section 601.081, Transportation Code, a certificate of an insurance company described by Section 601.083 of that code, a document purporting to be such a form or certificate that is not issued by an insurer authorized to write motor vehicle liability insurance in this state, an electronic submission in a form described by Section 502.153(i), Transportation Code, or an evidence of financial responsibility described by Section 601.053 of that code; or
- (E) An official ballot or other election record.

### ***Making and Preserving Government Records***

Section 37.10, Tampering with Governmental Record, declares in subsection (a) that a person commits a penal offense if he or she:

- (1) Knowingly makes a false entry in, or false alteration of, a governmental record;
- (2) Makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
- (3) Intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
- (4) Possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;

(5) Makes, presents, or uses a governmental record with knowledge of its falsity; or

(6) Possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

### ***Type of Offense; Punishment***

- Except for those actions described in ***items (a)(2) and (a)(3)***, an offense under Section 37.10 is a ***Class A misdemeanor***, punishable by a \$4000 fine, confinement in jail for a year or both, unless the person's intent is to defraud or harm another, in which event the offense is a state jail felony.
- An offense under this section is a ***felony of the third degree*** (imprisonment of 2 to 10 years plus a fine not to exceed \$10,000) if it is shown at trial that ***the government record was a license, certificate, permit, seal, title, letter of patent, or similar document issued by government***, unless the actor's ***intent is to defraud or harm another***, in which event the offense is a ***felony of the second degree*** (imprisonment for 2 to 20 years plus a fine not to exceed \$10,000).

### ***Destruction or Transfer of Government Records***

The destruction or transfer of a government record under the authority of Section 441.204 of the Texas Government Code is an exception to the application of this section of the Penal Code and is lawful. Chapter 441 is discussed in further detail in section V below.

### ***Affirmative Defenses***

- It is also an ***affirmative defense*** to ***prosecution for possession under item (a)(6) above***, that the possession occurred in the actual discharge of official duties as a public servant.
- Also, it is a ***defense to prosecution*** under ***subsections (a)(1), (a)(2) or (a)(5)*** that the false entry or false information could have no effect on the government's purpose for requiring the government record.

### ***Impersonating Public Servant***

Finally, a person commits an offense under Section 37.11, *Impersonating Public Servant*, if he or she:



(1) Impersonates a public servant with intent to induce another to submit to his or her pretended official authority or to rely on his or her pretended official acts; or

(2) Knowingly purports to exercise any function of a public servant or of a public office, including that of a judge and court, and the position or office through which he or she purports to exercise a function of a public servant or public office has no lawful existence under the constitution or laws of this state or of the United States.

An offense under this section is a ***felony of the third degree*** (imprisonment not more than 10 nor less than 2 years).

### III. Chapter 145, Texas Local Government Code

- In 2003, the 78<sup>th</sup> Texas Legislature amended the Local Government Code by adding a new Chapter 145, which requires a ***“municipal officer”*** to file a personal financial disclosure statement with the City Secretary on or before April 30<sup>th</sup> of each calendar year.
- Although passed in 2003, the law ***became effective January 1, 2005***, and the initial reports required were due no later than April 30 of that year.
- ***“Municipal officer”*** means the mayor, a member of the governing body, the municipal attorney, or the city manager of a municipality. Sec. 145.002.
  - As applied to Houston, only the Mayor, members of the City Council, and the City Attorney are required to file this disclosure statement.
  - The City Controller, not being a member of the governing body or otherwise covered by the aforementioned definition, is not included within the statute.
- The personal financial statement must disclose the municipal officer’s required financial information for the preceding calendar year.
- Failure to file the report is a Class B misdemeanor (\$2000 fine/6 months jail/both).
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### IV. Chapter 171, Texas Local Government Code

- This Chapter prohibits ***“local public officials”*** from taking part in a debate, vote, or decision in which they have a substantial interest.

- The term “**local public official**” means “a member of the governing body or another **officer**, whether elected, appointed, paid, or unpaid, of any . . . municipality, or **other local governmental entity who exercises responsibilities beyond those that are advisory in nature.**”
- The substantial interest at issue under this statute may arise through ownership of equity in a business entity (10% or \$15,000 fair market value), receipt of salary or other compensation from a business entity (10% or more), or ownership of an interest in real property (\$2500).
- The substantial interest rule extends not only to interests held by the local public official, **but also to interests held by his or her spouse and their close relatives, within the first degree of consanguinity or affinity (blood or marriage).**
- Chapter 171 is **cumulative of the Charter**, meaning that both apply. Therefore, compliance with Chapter 171 neither excuses compliance with the Charter nor allows the City to do business with firms in which a Council Member has a direct or indirect pecuniary interest.
- Where Chapter 171 is applicable, the public official must **file an affidavit** with the City Secretary before the vote or action is taken and **may not participate** in the vote, action, or debate on the matter. See § 171.004
- A violation of Section 171.004 is a **Class A misdemeanor (fine up to \$4000, one year in jail or both).**
- Chapter 171 does not prohibit uncompensated service on the board of a private, nonprofit corporation. However, its operation can be triggered by the compensated service of the public official or a covered relative.

## V. Chapter 176, Texas Local Government Code

- The 79<sup>th</sup> Texas Legislature amended the Local Government Code in 2005 by adding a new Chapter 176.
- This law requires a “**local government officer**” to file a disclosure form with the City Secretary if the officer or certain members of the officer’s family (**parents, children, spouse, in-laws**), have either of the following relationships with respect to a person who has contracted, or seeks to contract, with the City:
  - Has an employment or other business relationship with that person that results in the officer or family member receiving taxable income; or

- Has received one or more gifts from that person, other than gifts of food, lodging, transportation or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the 12-month period preceding the date the officer becomes aware that:
  - (A) A contract between the City and the person has been executed; or
  - (B) The City is considering doing business with the person.
- In Chapter 176:
 

***“Local government officer”*** means a member of the governing body of a local government entity or a director, superintendent, administrator, president or other person designated as the executive officer of the local government entity; and

***“Local government entity”*** means the City or a local government corporation, board, commission, district or authority to which a member has been appointed by the Mayor or the City Council. Organizations such as the Texas Municipal League are excluded from this definition.
- The state and its political subdivisions, the federal government and foreign governments are ***excluded*** from the requirements of Chapter 176. County governments, school districts, junior college districts ARE included within its provisions, however.
- Chapter 176 applies to a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local government entity or an agent of such person. ***There is no minimum contract amount under this statute!***
- The disclosure form to be filed by a local government officer is prescribed by the Texas Ethics Commission and may be downloaded at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).
- A disclosure statement must be filed not later than 5 p.m. on the 7<sup>th</sup> day after the date the officer ***becomes aware*** of the facts that require the filing of the statement.
- Failure to file the required disclosure statement is a Class C misdemeanor. The statement must be made under oath ***under penalty of perjury (a Class A misdemeanor, punishable by a fine not to exceed \$4,000, one year in jail, or both).***
- Chapter 176 also imposes an obligation to file a disclosure form on those persons who do business or seek to do business with the City.

## VI. Chapter 573, Texas Government Code (Nepotism)

- Chapter 573 prohibits nepotism.
- “**Nepotism**” is defined as “Bestowal of patronage by public officers in appointing others to positions by reason of blood or marital relationship to appointing authority.” Black’s Law Dictionary, 6<sup>th</sup> Ed., 1991.
- Applies to “public officials” which are defined as “**An officer of . . . a municipality . . . or other political subdivision of this state . . . or . . . member of a board . . . of a . . . municipality . . . or other political subdivision of this state.**”
- A public official may not appoint, hire or promote a person who is related within the **third degree of consanguinity** or the **second degree of affinity**. Chapter 573 does not generally affect the hiring or retention of employees who are related to Council Members because most hirings and promotions in City government do not require action by Council Members.
- Violation of the provisions of the law may be punished by **removal from office** or **a fine of \$100 to \$1000**.
- A chart showing the degrees of relationship by consanguinity and affinity for purposes of applying the state nepotism law is attached to this outline for reference.

## VII. Chapter 255, Texas Election Code

Chapter 255 of the Texas Election Code makes it a **Class A misdemeanor** for an officer or employee of the City **to spend or authorize the expenditure of public funds for political advertising**, which is defined as including many communications supporting or opposing a candidate or a proposition on a ballot. Expenditure has been interpreted to **include the use of City resources such as staff, fax machines, computers, and mail distribution**.

## VIII. Chapter 441, Texas Government Code

Subchapter J sets out requirements for the preservation, retention, and management of local government records. Section 2-111 of the Houston Code of Ordinances is loosely modeled on this subchapter. Procedures are in place to process and control the destruction of City records, and employees charged with such duties should ensure that any such action is taken in full compliance with those regulations.

## IX. Chapter 551, Texas Government Code (Texas Open Meetings Act)

- The Texas Open Meetings Act (“TOMA”) provides that meetings of **governmental bodies** must be open to the public, except for expressly authorized executive sessions (which are prohibited by the City Charter).
- “**Governmental body**” means:
  - A municipal governing body in the state;
  - A deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a municipality; or
  - The governing body of a special district created by law.
- The public must be given **72 hours’ notice** of the **time, place and subject matter** of meetings of governmental bodies.
- Actions taken by a governmental body in violation of the Act are **voidable**.
- The Act provides for a civil action to prevent a violation of the Act, or to require compliance with the Act.
- Certain violations of the Act are **punishable by criminal enforcement**. A member of the governmental body commits an offense if the member or group knowingly conspires to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations.

### ***Training Required (New)***

- In 2005, the Texas Legislature amended the TOMA to require that “each appointed or elected public official who is a member of a governmental body subject to this chapter” complete a course of training of **not less than one hour nor more than two hours** regarding the responsibilities of the governmental body and its members under that law.
- The required training must be completed not later than the 90<sup>th</sup> day after the date the member:
  - (1) Takes the oath of office, if the member is required to take an oath of office to assume the person’s duties as a member of the governmental body;
  - or
  - (2) Otherwise assumes responsibilities as a member of the governmental body, if the member is not required to take an oath of office to assume the person’s duties as a member of the governmental body.

### ***Persons Affected***

- The Mayor and members of City Council, as well as members of various City boards and commissions which are ***“subject to this chapter”*** (TOMA) are required to complete this training and confirm their completion of such training by completing a certificate of course completion form and filing the form with the City Secretary, as required by Section 551.005 of the TOMA.
- City boards and commissions subject to the TOMA and thereby affected by the new training requirement include, but are not limited to the:
  - Planning Commission;
  - Civil Service Commissions;
  - Boards created under the City Construction Code;
  - Helicopter Facility Licensing Board; and
  - Ethics Committee.

### ***Training Materials; Certificate of Completion***

The Legal Department has obtained the training material promulgated by the Texas Attorney General’s Office and will make it available to the proper officials. Upon completion of the training, each person must go to the Attorney General’s website ([www.oag.state.tx.us/](http://www.oag.state.tx.us/)) and follow these steps:

1. Click “Open Government Training” on the right side of the screen.
2. Click “Print course completion certificate.”
3. Follow instructions to complete the certificate.
4. Print course completion certificate.
5. File course completion certificate with City Secretary.

It is recommended that each person retain a copy of the certificate in his or her files. A sample copy of the course completion certificate is attached.

### **X. Chapter 552, Texas Government Code (Texas Public Information Act)**

- The Texas Public Information Act (“TPIA,” formerly, Texas Open Records Act) gives the public the right to request and look at government information. Although the Act makes most government information available to the public, a number of exceptions exist.
- ***Requests to review or copy information must be complied with by the City within 10 business days.***
- Public records encompass documents in any form and include calendars, phone records, and emails. The Texas Attorney General makes the final determination whether information is subject to an exception.

- ***Violations of the TPIA carry civil and criminal penalties.*** A public official commits an offense if, with criminal negligence, the official refuses a requestor access to, or copying of, public information as provided by the TPIA.
- The local government body may be subject to a civil suit to compel the release of requested information.
- Public officials have the duty to see that public records are protected from deterioration, alteration, mutilation, loss, or unlawful removal. Public records may be destroyed only pursuant to statutory authority.

### ***Training Required (New)***

As in the case of the TOMA, the TPIA was also amended by the Legislature in 2005 to add a “training requirement.”

### ***Persons Affected***

- New Section 552.0012 of the TPIA mandates that “***public officials***” covered by the TPIA, as well as the “officer for public information of a governmental body,” without regard to whether such person is appointed or elected, shall complete the training within the same time period as the TOMA training.
- Unlike the TOMA requirement, however, the covered public official ***may designate a public information coordinator*** to satisfy the training requirements of Section 552.012 for the public official.

### ***Training Materials; Certificate of Completion***

- As in the case of the TOMA training requirements, the Legal Department has obtained the training materials promulgated by the Attorney General and will endeavor to make it available to those who must complete the training requirement.
- The procedure for obtaining and filing the course completion certificate, set out above under the TOMA training discussion, should be followed to ensure full compliance with the required TPIA training requirement.
- A sample copy of the course completion certificate is attached.

## **LOCAL ETHICAL PROVISIONS**

### **I. City Charter**

- The City Charter prohibits certain conduct by “**officers**” of the City which term has been defined by Texas common law (case law) to mean a “**public officer**.”
- **Public officers** are distinguished from public employees as **having the authority to perform sovereign functions of the government “largely independent of the control of others.”** *Aldine I.S.D. v. Standley*, 154 Tex. 547, 280 S.W.2d 578, 583 (1955).
- Department heads and, possibly, some of their subordinates may be deemed to be **officers** of the City in certain circumstances. Listed below are examples of conduct which City officers should avoid:
  - City officers and employees may not hold employment while in arrears to the City for taxes or other obligations. (Art. III, § 2)
  - City officers may not divert funds from the sinking fund earmarked to retire public improvement bonds. Any such conduct is deemed a **felony**. (Art. IV, § 1)
  - An **officer** of the City may not have a direct or indirect **pecuniary** interest in a City contract, City work, “or in any matter wherein the rights or liabilities of the City of Houston are or may be involved.” (Art. VII, § 4)
  - **A violation of the provisions of Art. VII, § 4 of the Charter renders the affected contract null and void!**

## II. City Code of Ordinances

### A. Chapter 18 (Ethics and Financial Disclosure)

Article I of Chapter 18 prescribes standards of conduct for “**City officials**,” which is *defined in Section 18-2* as including only the following:

- Elected city officials (Mayor, Council Members, City Controller);
- Department directors and other employees required to be confirmed by City Council;
- Assistant city attorneys;
- Persons holding executive level employee positions which are defined by Article Va, section 2(f) of the City Charter as those employees “whose duties require them to determine and publicly advocate substantive program policy, provide legal counsel, or to maintain a direct, confidential relationship with



an appointive official of the city . . . or with an elected officer of the city (i.e., Council aides); or

- ***Appointed members of city boards, committees and commissions.***

### ***Prohibited Conduct***

Section 18-3 ***mandates that no city official (including a salaried city official) shall:***

- Engage in any business or professional activity that might reasonably tend to conflict with the discharge of official duties.
- Invest or hold any investment or interest directly or indirectly in any financial, business, commercial or other transaction, that creates or might reasonably tend to create a conflict between the public trust held as an official of the city and the official's private interests.
- Disclose confidential information concerning the property, operations, policies or affairs of the city, or use such confidential information to advance the personal interests, financial or otherwise of said official or others, or accept employment or engage in business or professional activity that the official might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official position.
- Use one's official position or the city's facilities, equipment or supplies for the private gain or advantage of the official or others, or use or attempt to use one's official position to secure special advantage for the official or others.
- Negotiate for or accept future employment with any person, firm, association or corporation that has a substantial interest in any proposed ordinance or decision within such person's area of responsibility and upon which the official may or must act or make a recommendation subsequent to such negotiation or acceptance.
- Appear before the body of which the official is a member while representing any private person, group or interest.
- Engage in or promote ideas and/or actions that would demean and defame any particular ethnic group, racial minority group, special interest group and/or religious group.
- Represent directly or indirectly, any private person, group or interest before any agency of the city, except in matters of purely civic or public concern and when doing so, without compensation or remuneration.
- Represent, directly or indirectly, any private person, group or interest, in any action or proceeding in which the city or any agency thereof is a party.

However, this provision shall not prohibit representation by a group, firm or organization the city official is associated with if such city official does not participate in the action, proceeding or litigation in any manner and does not receive any benefit directly or indirectly from the action or proceeding.

- Represent, directly or indirectly, any private person, group or interest in any action or proceeding in the municipal courts of the city that was instituted by a city officer or employee in the course of official duties.

Violations of the provisions of Section 18-3 may be reviewed by the Ethics Committee. (Ch. 18, art. II.)

**THE PROHIBITIONS CONTAINED IN THE FOREGOING SECTION APPLY TO ALL APPOINTEES TO CITY BOARDS AND COMMISSIONS**

### ***Financial Disclosure Statement***

Financial disclosure statements must be filed by the Mayor and all Council Members, department heads, executive level staff members, and all attorneys in the Legal Department. (Ch. 18, art. III). The reporting and filing requirements were amended by the City Council in 2005.

### ***Time for Filing***

Under the 2005 amendments to Chapter 18, and for the report due in 2006 only, the required disclosure form must cover the period from ***October 1, 2004 through December 31, 2005 and must be filed no later than April 30, 2006.***

Financial disclosure reports for subsequent years must cover the preceding calendar year and be filed not later than April 30<sup>th</sup> of each succeeding calendar year.

### ***Form of Report***

The filing requirements in Chapter 18 applicable to the Mayor, Council Members and the City Controller were also amended to allow the financial disclosure statements filed by the Mayor and Council Members pursuant to Chapter 145 of the Local Government Code (discussed above) to satisfy the Chapter 18 filing requirement and to permit the City Controller to elect to file either the Chapter 145 form or the Chapter 18 form to satisfy the requirements of Chapter 18.

The reports are reviewed by the Ethics Committee. Common reporting errors include:

- Failure to provide all required data.
- Failure to indicate “not applicable” or “none” in those fields where there is no data to report.
- Premature completion or filing of the report.

- Failure to identify the location of real property in the real property listings required in the report.
- Failure to have the report properly notarized.

## **B. Chapter 14 (Civil Service)**

### ***City Employee as Candidate for Elective Office***

***Employees should notify the Director of Human Resources in writing when they become a candidate for elective office.*** (Houston City Code § 14-156) Although not specifically addressed in the City Code, this rule involves two considerations that may raise conflicts with City employment:

- The federal Hatch Act imposes restrictions on the partisan political activities of employees whose jobs are funded in whole or in part with federal funds.
- In certain instances, department heads and some other City personnel **may** be deemed to be “officers” under Texas law. Virtually all elected office holders are also “officers,” as that term is used in the Texas Constitution. The Texas Constitution and common law prohibit the simultaneous holding of two public offices in many circumstances.

### ***Hiring and Promotion of Employees***

- ***Department heads have personal responsibility for the hiring and promotion of employees within their departments.*** This includes Civil Service employees. (Houston City Code Ch. 14, Rules 8 & 10)
- Department heads are subject to state nepotism laws, which are discussed above. Directors and other supervisory personnel should ensure that they are familiar with the Administrative Procedure No. 3-5, relating to the hiring of persons for Key Executive Management Positions, Pay Grade 30 and above, and the Mayor’s Policy on Hiring Relatives (Policy No. 104). Both are available online via C.H.O.I.C.E.net. [www.choice.net](http://www.choice.net).

### ***Prohibited Conduct***

Under Sec. 14-183, each City employee is subject to discipline for a wide range of violations of an ethical nature including:

- Accepting gifts given with the intent to influence.
- Accepting gifts for doing one’s duty.
- Engaging in outside business activities that might tend to impair independent judgment.
- Holding investments that conflict with the public trust.

- Disclosing certain confidential information or the use of confidential information for personal benefit.
- Using one's City position to secure any benefit.
- Negotiating for or accepting future employment where a conflict exists with City duties.
- Representing persons before City agencies, except in civic affairs.
- Representing any person in civil litigation against the City or in a Municipal Court case.
- Similar provisions are contained in Chapter 18, which apply to department heads and executive level personnel and members of boards and commissions and are discussed below.
- ***Additionally, many requirements of Section 14-183 overlap state penal laws*** (Tx. Penal Code, Ch. 36, Bribery & Corrupt Influence) and the Mayor's Executive Order on gifts (E.O. 1-28).
- Section 14-183(f) authorizes department heads to adopt additional ethics rules within their departments. Each employee should inquire about and obtain a copy of any additional ethics rules within his or her department.

### C. Chapter 15 (Contracts)

Section 15-1 of the City Code of Ordinances contains various policies applicable to all city employees regarding City contracts:

- City employees may not bid on or be awarded any contract let by the City or have a direct or indirect pecuniary interest in City contracts. This provision is very similar to the provisions of Art. VII, § 4 of the Charter discussed above, which applies to "officers" of the City.
- No firm, partnership or corporation in which any employee of the City has any ***ownership interest*** in ***excess of one percent of the total*** ownership of the firm, partnership or corporation shall bid on or be awarded any City contract.

In the application of Section 15-1, it is important to distinguish which employees are "***officers***" because the Charter provisions that apply to officers are ***more restrictive*** than Section 15-1 which applies to all "employees," who may or may not also be "officers." If a person is ***both*** an employee and an officer, the more restrictive provisions apply.

The Legal Department has opined that Section 15-1 does not apply to community property interests at the subcontract level. However, an employee may be in

violation of other applicable ethics provisions if a close relative acted as a subcontractor on a City job.

### III. **Administrative Policies and Executive Orders**

The Mayor's Office has issued a number of Administrative Procedures and Executive Orders, available at [www.choice.net](http://www.choice.net). While most of these promulgations affect all City employees, the policies regulating gifts, the use of City vehicles, and travel on City business most often give rise to ethics inquiries.

#### ***Gifts***

Executive Order 1-28 on gifts (Mayor's Gift Policy) is applicable to all employees, including department heads. ***Only elected officials are exempt.*** This policy prohibits employees from accepting anything of value from any person who is:

- Subject to City regulation (Permit and License holders, etc.).
- Under criminal investigation.
- Charged in a case pending in Municipal Court.
- Acting as a lobbyist or consultant representing others before the City.
- Holding or seeking City contracts or purchase orders.
- Making claims against the City.
- Otherwise in a position to benefit from City activity.

Exceptions are made for gifts from certain close relatives. An exception may also be made by an employee's department head for attendance at business and social functions ***if the sponsor is reimbursed*** for the cost of any food, lodging, transportation or entertainment provided.

The full text of the Mayor's Gift Policy should be reviewed by each employee to ensure that no unintended or inadvertent action results in a violation of its terms. This policy is far more restrictive in most respects than the corresponding provisions of the Penal Code, discussed above.

#### ***Motor Vehicles***

Administrative Procedure 2-2 addresses Motor Vehicle Assignment and Use. This policy affects department heads and employees in a number of ways. Department heads are responsible for enforcing this policy with respect to their staff members, particularly as it may directly affect the following situations:

- Department heads and employees who are assigned take-home cars should make certain they have the required non-owned insurance rider for their

take-home cars. Fire and Police personnel are exempt from this requirement.

- All employees are responsible for traffic citations and fines received while operating City vehicles.
- City vehicles, including Department heads' vehicles, are subject to the markings requirement under state Law, and applicable vehicles should be properly marked. Only vehicles used for law enforcement purposes are exempt. (Tex. Transp. Code, §§ 721.004 - 721.006)
- City-assigned vehicles are for City use only, and personal use is prohibited.

### ***Travel***

Travel authorization and reimbursement for travel expenses are set forth in Administrative Procedure 2-5. Department directors or their designees must approve travel, travel advances, and all travel-related expenses and reimbursements. All foreign travel must be approved by the Mayor or his designee. It is also advisable to remember that such reports are governmental records, open to public inspection by any person upon request under the Texas Public Information Act.

Rules governing travel expenses for City business travel of both salaried and non-salaried employees or elected officials are set forth in Section 2-31 of the Code.

### ***Other Provisions***

Possible traps for the unwary are the record keeping and reporting requirements of Sections 37-23 and 37-26 of the City Code. These sections require City employees who are in the "regulatory chain," as defined by Section 37-21, to make a permanent record of all communications, written or oral, with officers, owners, employees and other representatives of public utility companies over which the City exercises regulatory authority. The report is to be filed monthly with the Director of Finance and Administration. A form for the keeping of such records has been developed and should be reviewed if your job duties or position place you in the "regulatory chain."

Attachments - 3